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International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2798/2016*, **

Submitted by:	J.B. (represented by counsel)
Alleged victim:	J.B. and E.B.
State party:	Australia
Date of communication:	12 March 2015 (initial submission)
Document references:	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 24 August 2016 (not issued in document form)
Date of adoption of Views:	21 July 2017
Subject matter:	Custody over a child/young woman diagnosed with autism spectrum disorder
Procedural issues:	Abuse of the right of submission of communication; non-exhaustion of domestic remedies; non-substantiation of claims; victim status; inadmissibility *ratione materiae*
Substantive issues:	Non-discrimination; torture and ill-treatment; arbitrary deprivation of liberty; liberty of movement; right of access to a fair trial; right to privacy; family rights; children's rights; equality before the law
Articles of the Covenant:	2, 7, 9, 12, 14, 17, 23, 24 and 26
Articles of the Optional Protocol:	3 and 5

1.1 The author is J.B., a national of Australia born on 26 October 1951. She submits the complaint on her behalf and on behalf of her daughter, E.B., also an Australian national, born in 1980.

1.2 The author claims that the State party has violated her rights and the rights of her daughter under articles 2, 7, 9, 12, 14, 17, 23, 24 and 26 of the International Covenant on

* Adopted by the Committee at its 120th session (3-28 July 2017).

** The following members of the Committee participated in the examination of the present communication: Tania Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Olivier de Frouville, Ahmed Amin Fathalla, Christof Heyns, Yuji Iwasawa, Bamariam Koita, Duncan Muhumuza Laki, Photini Pazartzis, Mauro Politi, Jose Manuel Santos Pais and Margo Waterval.

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Civil and Political Rights, because her daughter, who is diagnosed with autism spectrum disorder, was taken from her custody by the New South Wales Government Department of Community Services when she was 6 years old. The Optional Protocol entered into force for the State party on 25 December 1991. The author is represented by counsel, Christopher Kogias.

1.3 On 13 March 2017, the Committee, acting through its Special Rapporteur on new communications and interim measures, decided to consider the questions of admissibility and the merits of the communication separately.

The facts as submitted by the author

2.1 The author married her daughter's father on 25 April 1987. They separated on 29 January 1990, when the author was four months pregnant. The father had some contact with his daughter after she was born, but ceased all contact after she turned 3 years old. The author submits that, the same year, her daughter was diagnosed as having "moderate autistic tendencies" by the Kogarah Diagonistic Clinic. About a year and a half later, she was diagnosed with "mild autistic tendencies" by the same clinic.

2.2 The author submits that she came to the attention of the Department of Community Services in 1995 following an incident in which her daughter developed a small blue rash/lump on the upper part of her cheek. Department workers came to her home to investigate and accused her of abusing her daughter. The author explains that she had taken her daughter to see the family doctor the day before and he had diagnosed the rash as being an allergic reaction to a mosquito bite. The doctor telephoned the Department to assure them that the mark on her daughter's cheek was not a result of any abuse by the mother, and he appeared as a witness for her in the court proceedings in 1996 and 1997.

2.3 The author states that, on 6 August 1996, there was a confrontation between her and the same Department of Community Services workers who had come to investigate the year before. She claims the workers "provoked" her, then called in a mental health team and had her admitted to the psychiatric ward of the local hospital. The workers told the doctors that the author had threatened to kill herself and her daughter, which the author denies. She was kept in the hospital for three days then released because she was not found to have any mental illness.

2.4 On 14 August 1996, the Department of Community Services commenced court proceedings against the author to remove her daughter from her care, relying on a psychiatric report from a psychologist who was also an employee of the Department. During the proceedings, the author's daughter was placed with foster parents. The author claims that, when her daughter asked for her during that time, the Department workers told her that her mother had abandoned her. On 21 July 1997, the court decided that the daughter should be placed with her father.[1] According to the author, when their daughter was placed in his care, her ex-husband and his new wife were strangers to her. She also suggests that her ex-husband's new wife was not happy about having to care for a young child with autism.

2.5 The author complains that the court proceedings were "a terrible miscarriage of justice". She claims that the proceedings were unfair and that she could not effectively cross-examine the Department of Community Services witnesses who provided testimony against her. The Department alleged that the daughter was in need of care and that the author was an unfit mother. The author maintains that she had been a good mother who had done everything possible for her daughter, attending to all her needs. She adds that, as demonstrated by her fight throughout the years to regain custody of her child, she loves her very much.

2.6 The author maintains that she had taught her daughter to read, count and talk and had taken her regularly to the baby health clinic for the first six years of her life to make sure that she was healthy and developing properly. She submits that the clinic had placed

[1] A copy of the orders made by the Children's court on 21 July 1997 is attached to the author's affidavit sworn on 5 April 2002.

the daughter on a list to see a speech therapist when she was two and a half years old. The author submits that she repeatedly contacted the Department of Community Services to remind them that the Kogarah Diagnostic Clinic had told them in 1993 and 1994 that the daughter needed to see a speech therapist as a high priority. The author explains that the Department ignored her, despite their promise to attend to the daughter's needs. From 1993 to 1995, the daughter attended preschool and play schools. In 1996, the author placed her daughter in the Loftus Satellite Class School with the help of the Autism Association of New South Wales, which gave her help and advice on how to take care of an autistic child. The author submits three affidavits in support of her parental capacities.

2.7 The author explains that, as her ex-husband had denied her any form of contact with her daughter and as she had concerns about the daughter being neglected, mistreated and abused by her father and stepmother, she decided in December 1999 to initiate proceedings in the Sydney Children's Court to rescind the care orders made by the court on 21 July 1997. The author submits that the Court rejected her request that an assessment be carried out of her daughter's intellectual capacity, and for her daughter to be able to participate in the proceedings to express her position as to her placement and treatment. The Court gave a supervision order to the Department of Community Services requiring the author's ex-husband to permit reasonable contact between the mother, the daughter and the daughter's siblings.[2]

2.8 In April 2002, the author initiated new proceedings in the Sydney Children's Court, seeking a rescission of the care orders of 1997 and 2000. She submitted a request that her daughter, who was 12 years old at that time, be allowed to give evidence regarding the abuse and treatment by her father and stepmother, and a request that her daughter be assessed by an independent expert. Both requests were rejected. The author explains that the proceedings were later transferred to the Wyong Children's Court. The magistrate ordered that the daughter be allowed to have unsupervised contact visits with the author for two days every school holiday.

2.9 In January 2003, the author lodged an appeal with the Sydney District Court against the 2002 decision by the Wyong Children's Court. The Court ordered an assessment of her daughter by an expert attached to the Children's Court. The expert also interviewed the author, who was assessed as having "a chronic undiagnosed paranoid disorder" manifested by the "conspiracy theory" about the Department of Community Services. The expert placed very little emphasis on the medical reports filed by the author of doctors that she had been seeing over lengthy periods of time since she had lost the custody of her daughter. In the oral proceedings, the expert admitted that the author's daughter had said that she wanted to live with her mother and not with "those people who treat me bad" and that "my mummy has never treated me bad". However, the expert disregarded the wishes of the author's daughter because she believed that the author's daughter did not have the capacity to know what was in her best interest. The author submits that, as a consequence, the court ordered that her interaction with her daughter be limited to three hours of supervised contact every school holiday. The author indicates that, despite the fact that it was revealed during the proceedings that her daughter had been abused by her father and stepmother, she was still left in their care.

2.10 On 12 March 2003, the author filed an application in the Family Court of Australia in Melbourne, Victoria, which has Federal Jurisdiction, because she felt she was not getting a fair trial under the jurisdiction of the New South Wales court, but to no avail.

2.11 In February 2005, the Department of Community Services filed an application in the Children's Court at Wyong seeking custody of the daughter because, allegedly, the father no longer wanted to take care of her. The author applied for legal aid, but her request was rejected. Her solicitor withdrew from the proceedings and she had to withdraw her application.

2.12 On 18 February 2005, the author filed an application in the High Court of Australia seeking special leave to appeal the single-judge decision made on 20 September 2004 by the Family Court of Australia. She also sought an order from the High Court to prevent the

[2] No further details are provided.

Minister in charge of the Department of Community Services from proceeding with court action in the Wyong Children's Court, by which the latter had sought orders to place the author's daughter in the care and custody of new foster parents while the High Court determined the matter. The author also sought to take advantage of new rules applying to the High Court that came into effect in January 2005, allowing unrepresented applicants to file written submissions to the High Court to seek leave or special leave to appeal. Her application was rejected by the Registrar on the basis of rule 6.07, according to which such applications can be rejected by the Registrar if it appears on its face to be an abuse of process of the Court, or to be frivolous or vexatious. The author submits that her application did not fall in any of those categories.

2.13 The author sought federal legal aid assistance to lodge an appeal before the High Court of Australia, but her application was refused. She explains that, without such assistance, she could not proceed because she was not able to pay for a senior counsel to assist in the appeal.

2.14 The author explains that, in April 2008, with the daughter now turning 18 years of age, the Department of Community Services commenced proceedings to be in charge of her guardianship. The author made an application to the New South Wales Guardianship Tribunal to join the proceedings in order to seek a guardianship order in respect of her daughter. The Tribunal did not permit the author or her daughter to provide evidence and announced before the proceedings had ended that it was not considering issuing a guardianship order in favour of the author. During the proceedings, a medical report was disclosed stating that the author's daughter was receiving "sexual assault counselling". Due to a lack of financial resources, the author's counsel was unable to file an application in the High Court of Australia to stay the proceedings in the Guardianship Tribunal and to request the removal of the matter from the Tribunal to the High Court.

2.15 On 23 September 2013, the author's counsel sent a letter to the National Children's Commissioner of the Human Rights Commission requesting assistance to help the daughter, who was 23 years old at the time.[3] The counsel only received a brief telephone call in response, informing that the Human Rights Commission could not assist in the matter.

2.16 The author provides letters and affidavits from different individuals testifying that, throughout the years, her daughter consistently requested to live with her and complained about sexual and other abuses by her father, stepmother and Department of Community Services employees.

The complaint[4]

3.1 The author claims that her rights and those of her daughter under article 2 (1) of the Covenant have been violated because the State party has not treated them with respect but instead has used their status as vulnerable individuals with a mental disability as a vehicle to deny or ignore and violate the rights they have under the Covenant, and to discriminate against them. She claims that such discrimination has had very severe and ongoing consequences, detrimental to their health and well-being.

3.2 The author also claims that the rights of her daughter under article 7 of the Covenant have been violated by the State party by taking her, a child diagnosed as being on the autism spectrum, away from the loving care and support of her mother and from her home, and placing her in an environment that was unfamiliar, strange and hostile to her, where she was abused, including sexually, mistreated and neglected, where her wishes were ignored, where she was medicated against her will and where she was only allowed to have very little contact with her mother. According to the author, this amounts to cruel, inhuman and degrading treatment and punishment. She claims that her own rights under article 7 of the

[3] The author provides a copy of the letter sent to the National Children's Commissioner of the Human Rights Commission, on 23 September 2013.

[4] The author also claims a violation of her rights and those of her daughter under various articles of the Convention on the Rights of the Child. As these allegations fall outside the scope of the competence of the Committee, they have not been taken into account in this communication.

Covenant have been violated owing, inter alia, to the fact that she has been deprived of the right to raise her daughter, which has caused her great distress and suffering.

3.3 The author further claims that the State party has deprived her daughter of her right to liberty and security, as enshrined by article 9 (1) of the Covenant, as she was kept in detention against her will. The author maintains that her daughter is not mentally ill, has not broken any laws or committed any criminal or civil offence, and has not been convicted of any offence in a court of law. The author claims that her daughter's wishes are being ignored and that her daughter is not permitted to see, speak or write to her.

3.4 The author maintains that her daughter's rights under article 12 (1) of the Covenant have been violated since she does not have a right to liberty of movement within the State party and she does not have the freedom to choose her residence. If she did, she would leave the premises where she is being detained against her will and go to live with her mother.

3.5 The author also maintains that her rights and the rights of her daughter under article 14 (1) of the Covenant have been violated since they were not treated fairly by the courts. The evidence they submitted in the proceedings was generally given very little weight, if any, and the written evidence was not subjected to cross-examination. She submits that they were both branded as "mentally ill" during the Sydney District Court proceedings and that an expert report during the Court appeal proceedings labelled her as having a paranoid delusion about what the Department of Community Services had done to her and her daughter. The author maintains that their rights under article 14 (3) of the Covenant were violated since, throughout the court proceedings, her daughter could not choose her legal representative and her instructions to her legal representative were ignored, supposedly owing to her mental disability. The daughter was not allowed to give evidence in the proceedings, as required by the New South Wales Guardianship Act. Furthermore, the medical experts who interviewed her daughter and provided their reports to the courts were not independent of the Department. The author submits that her daughter did not trust them and refused to talk to the report writers.

3.6 The author maintains that her rights and her daughter's rights under article 17 (1) of the Covenant have been violated since they were subjected to arbitrary/unlawful interference with their privacy and family life because of the "wrongful interference" of the Department of Community Services, which was carried out without legal grounds.

3.7 The author further claims that a violation of her rights and the rights of her daughter under article 23 (1) of the Covenant since the intervention of the State party destroyed the family unit that had consisted of the author, her daughter and other relatives.

3.8 The author submits that her daughter's rights under article 24 (1) of the Covenant have been violated since, as a child with autism, she did not have equal protection of the law. She claims that the daughter's status as a child with a disability was used as a vehicle by the State to discriminate against her.

3.9 Finally, the author claims that her rights under article 26 of the Covenant, to equality of treatment before the law and to equal protection of the law without any discrimination, have been violated. She also claims she has been discriminated against because of her mental, which in reality is only depression, and as a result she has been treated unfairly by the courts, where she has been denied procedural fairness and justice.

3.10 The author maintains that the key issues in the present case are her daughter's preferences and whether she had the mental capacity to know what is in her own best interest. She considers that her daughter has the mental capacity to make decisions that are in her own best interests, despite the opinions of what she calls her daughter's "carers/controllers".

State party's observations on the admissibility

4.1 On 3 February 2017, the State party submitted its observations on the admissibility of the communication. It considers that the author's allegations should be held inadmissible on various grounds. It submits that, for reasons of confidentiality of the situation under

review, it is not in a position to provide observations on the merits of the author's allegations until the admissibility of the communication is determined by the Committee.

4.2 The State party submits that the author lacks the authority to bring the communication on behalf of her daughter as required by rule 96 (b) of the Committee's rules of procedure. It explains that no documentation has been provided indicating that the author or her counsel have the authority to submit the complaint on behalf of the author's daughter, who is now an adult in her own rights. In that connection, the State party notes that the author herself recognizes that she has had limited contact with her daughter since 1996. The State party also notes that the complainant has not provided any evidence to demonstrate that she has had any legal guardianship over her daughter.

4.3 The State party submits that, considering the legal requirements with respect to the privacy of individuals and their health and other personal records, it would not adequately protect the author's right to protection against arbitrary and unlawful interference with privacy by providing sensitive personal information "to persons who may not have a legal right to access such information". On that basis, without being satisfied that relevant authorizations are in place in relation to the disclosure of information regarding the complainant's daughter, the State party considers that it is not in a position to disclose personal and health information about the author's daughter to the Committee.

4.4 The State party maintains that it is unable to respond in relation to the personal circumstances of the author's daughter. It considers that, to the extent that the allegations of violations in the communication relate to the author's daughter, they are inadmissible on the basis that neither the author nor her counsel have the authority to make such claims.

4.5 The State party also submits that the author has not demonstrated that she has exhausted all available domestic remedies, as required by rule 96 (f) of the Committee's rules of procedure and articles 2 and 5 (2) (b) of the Optional Protocol. The State party notes that a lack of financial means does not absolve the author of the requirement to exhaust all available domestic remedies and refers to the Committee's jurisprudence in *P.S. v. Denmark*, in which, noting that the author had refused to avail himself of domestic remedies "because of considerations of principle and in view of the costs involved", the Committee found that "financial considerations and doubts about the effectiveness of domestic remedies do not absolve the author from exhausting them".[5]

4.6 In that connection, the State party indicates that a number of domestic remedies would appear to remain available to the author. It submits that the author could seek judicial redress from: (a) the Full Bench of the Family Court; (b) the Guardianship Division of the New South Wales Civil and Administrative Tribunal (if a guardianship order is in place); (c) the Supreme Court of New South Wales; (d) the Court of Appeal of New South Wales; and (e) the High Court of Australia. The State party explains that: (a) with respect to any care and protection orders made in relation to the author's custody over her daughter, the author does not indicate that she has sought leave to appeal any adverse decisions or orders of the Family Court to the Full Bench of the Family Court or sought special leave to appeal from the Full Bench of the Family Court to the High Court of Australia; (b) with respect to any guardianship orders that may have been made by the former New South Wales Guardianship Tribunal or Civil and Administrative Tribunal, the author does not demonstrate that she has sought review of such orders before the Civil and Administrative Tribunal, or appealed such orders before the New South Wales Supreme Court, New South Wales Court of Appeal or the High Court; and (c) with respect to any decisions that may have been made by the Public Guardian under any applicable guardianship order, the author does not demonstrate that she has utilized available review processes before the Civil and Administrative Tribunal or appealed any such review to the New South Wales Supreme Court, New South Wales Court of Appeal or High Court.

4.7 The State party submits that the author could also make a complaint to the New South Wales Ombudsman, which has the authority to investigate decisions and conduct of the Family and Community Services (formerly the Department of Community Services) and Public Guardian. It clarifies that the Ombudsman can receive and investigate

[5] See communication No. 397/1990, *P.S. v. Denmark*, Views adopted on 22 July 1992, para. 5.4.

complaints about community service providers, such as those who provide child protection services, out of home care, disability services and supported accommodation and assistance programme services.

4.8 The State party submits that, from the material available, it understands that, in February 2005, the author sought to file a special leave to appeal application with the High Court to challenge a single judge decision of the Family Court. According to the information available, the High Court refused to accept that application on the basis that the complainant had not exhausted her legal avenues of appeal through an appeal to the Full Bench of the Family Court.

4.9 The State party notes that, according to the author's submission, the State party provided legal aid to the author to assist her financially with her family court proceedings. The complainant's submissions indicate that she was refused a further application for Commonwealth legal aid on 20 June 2006. The author was also unsuccessful in her attempts to secure legal representation through the New South Wales Legal Aid Commission or her separate requests that the Commonwealth Attorney-General: (a) issue a fiat; and (b) intervene in the complainant's family law proceedings concerning her daughter.

4.10 The State party submits that the author does not provide any evidence to support her claims that she lacks financial resources to exhaust domestic remedies and that the remedies would not be effective. The State party submits that the legal remedies outlined above would have constituted effective remedies to the author's allegations, and that the author has provided insufficient information on her attempts to pursue the available domestic remedies outlined above. The State party considers that the domestic remedies that remain available could have provided timely and effective relief or redress to the author. It also considers that the author has not demonstrated that those remedies would be ineffective. In consequence, the Committee should declare the author's allegations inadmissible.

4.11 In regard to the author's allegations with respect to article 14 (3) of the Covenant, the State party submits that the proceedings to which the author refers — being civil proceedings relating to familial custody, guardianship and child protection arrangements — are not criminal proceedings and, as such, clearly fall outside of the scope of article 14 (3) of the Covenant. The State party therefore considers that the author's claims made under article 14 (3) should also be dismissed *ratione materiae*.

4.12 The State party submits that the author's allegations under articles 2, 7, 9, 12, 14, 17, 23, 24 and 26 of the Covenant are insufficiently substantiated to enable the State party to respond and should be declared inadmissible pursuant to rule 96 (b) of the Committee's rules of procedure. The State party notes that the Committee has previously held that a "claim" is not merely an allegation, but "an allegation supported by substantiating material".

4.13 In that regard, the State party argues that the author has provided, by way of attachments to her communication, documents purportedly supporting her allegations, including but not limited to: affidavits made by the complainant and other persons in the course of legal proceedings and extracts of the complainant's legal applications and submissions to the jurisdictions of the State party, including alleged independent witness accounts of events. The State party indicates that, with the exception of one "minute of care" order from the Children's Court, one order and one interim order regarding parental responsibility from the Children's Court and one transcript of a closed court judgment, the complainant has not provided the necessary hearing transcripts, judgments and final orders made in each of the various legal care, custody and guardianship proceedings since 1996 to verify her claims.[6] The State party submits that the three orders and one transcript provided are not sufficient to substantiate her claims. It further explains that the relevant New South Wales authorities are not able to disclose relevant information to the Government of

[6] The State party refers to the following, attached to the communication: the Minute of Care Order dated 21 July 1997 from the Children's Court at Campsie, an order for sole parental responsibility made by the Children's Court at Wyong, dated 18 September 2002, the transcript of a closed court judgment by Judge Balla, dated 15 October 2003; and an interim order by the Children's Court at Wyong, dated 11 January 2005, by which the Court granted parental responsibility to the Minister on condition that the mother not contact the child directly or through a third party.

Australia because such disclosure would constitute an arbitrary or unlawful interference with the privacy of the individuals involved.

Author's comments on the State party's observations

5.1 The author submits that her allegations are more than sufficiently substantiated and supported by a plethora of court sealed legal documents, affidavits, medical reports and correspondence with government ministers, politicians and other entities. The author also clarifies that the remedy she is seeking is that her daughter be released from the guardianship of the Public Guardian and placed in her sole care.

5.2 Regarding the State party's statement that the communication has not been brought validly on behalf of the author's daughter, as required by rule 96 (b) of the Committee's rules of procedure, the author submits that she has not been allowed to have any contact with her daughter for the past six years. She has written a number of letters to the Public Guardian seeking to make contact with her daughter on special days, but all were refused on the grounds that her daughter did not want to see her, which she denies.[7] She indicates that, considering the circumstances, she has not been able to seek the authority of the daughter's legal guardian, as her request would have been refused. The author claims that she has the standing and authority to bring the communication on behalf of her daughter because of the strong bond that she has with her as her mother.

5.3 The author also submits that she is very concerned that her daughter's health is deteriorating rapidly as, the last time she saw her, in 2010, she had been grossly overweight and drugged.

5.4 Regarding the State party's submission that the author's allegation with respect to the violation of her owns rights under the Covenant are inadmissible as she has not exhausted all available domestic remedies, the author claims that she has used all domestic remedies mentioned by the State party, except the New South Wales Supreme Court. She decided instead to use the Family Court of Australia, which has much more experience in handling children's matters and has federal jurisdiction, and has the same *parens patriae* jurisdiction as the state supreme courts. She also claims that, in all the court proceeding, neither she nor her witnesses nor the medical experts who have been treating the author and her daughter for a number of years were given credibility.

5.5 With regard to the State party's argument that the author's allegations under article 14 (3) of the Covenant are inadmissible as the article does not apply to civil law or family lay proceeding, the author claims that the outcome of the proceeding have resulted much more onerous and severe to her daughter than if she had committed a criminal offence, and that the judgment has destroyed their lives and health.

5.6 The author submits that, owing to lack of financial means and legal aid funding, she could not obtain all relevant transcripts, evidence, judgments or orders concerning the protection, care and custody of her daughter required by the State party. The author also submits that the State party could have taken instructions from her and could have obtained all documents needed from the Department of Community Services.

5.7 The author finally submits that, on 24 November 2015, she attempted to get her daughter to give evidence in the Royal Commission into Child Abuse of the Federal Government. However, the guardian of the author's daughter did not allow her to give evidence to the Commission.

Additional observations by the State party on the admissibility

6.1 On 19 May 2017, the State party submitted additional observations on the admissibility of the communication. It submits that it has reviewed the author's additional submissions and determined that there is no new information or evidence provided to alter its original assessment that the author's claims are inadmissible.

[7] The author provides copies of her letters to the Public Guardian seeking contact with her daughter and the response she received from him.

6.2 The State party reiterates that the author has failed to exhaust the domestic remedies available to her with respect to any guardianship orders that may have been made. With regard to the author's argument that the lack of credibility afforded to her evidence led her to choose not to exhaust domestic remedies, the State party submits that, if a party to a proceeding is not satisfied with the decision, the appropriate avenue of review is through the appeal process. It explains that the appeal process enables a person involved in legal proceedings to challenge the decision of a court. It also notes that it is a fundamental part of its legal system that all persons with standing are afforded the right to challenge decisions that affect their legal rights.

6.3 Regarding the reference made by the author to the Royal Commission into Institutional Responses to Child Sexual Abuse, the State party submits that, on 10 May 2017, it was advised by the Chief Executive Officer of the Royal Commission that, owing to privacy reasons, it was unable to disclose any information on any dealings it may have had in relation to the complainant or her daughter.

6.4 Concerning the author's argument that she did not appeal the decision in her proceeding before a single family court judge to the Full Bench of the Family Court of Australia but instead attempted to proceed on appeal directly to the High Court of Australia, the State party submits that the two decisions mentioned by the author (High Court decision of *Duff v. Duff*, 1977; and Family Court of Australia case *Re. Z* (No. 2), 1996) in support of her argument are not relevant to her case and do not give her the authority not to pursue the appropriate appeals process to the Full Bench of the Family Court before proceeding to apply for leave to appeal in the High Court.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claims contained in a communication, the Human Rights Committee must decide, in accordance with rule 93 of its rules of procedure, whether it is admissible under the Optional Protocol to the Covenant.

7.2 The Committee has ascertained, as required by article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under any other international procedure of investigation or settlement.

7.3 The Committee notes the State party's contention that the author's allegations are inadmissible because the author has not demonstrated that she has exhausted all available domestic remedies; she lacks authority to bring the communication on behalf of her daughter; a number of the author's claims are inadmissible *ratione materiae*; and her allegations under articles 2, 7, 9, 12, 14, 17, 23, 24 and 26 of the Covenant are insufficiently substantiated.

7.4 The Committee takes note of the State party's argument that a number of domestic remedies would appear to remain available to the author, particularly: (a) the Full Bench of the Family Court; (b) the Guardianship Division of the New South Wales Civil and Administrative Tribunal (if a guardianship order is in place); (c) the Supreme Court of New South Wales; (d) the Court of Appeal of New South Wales; and (e) the High Court of Australia. The Committee notes the author's explanation that she could not exhaust all available domestic remedies owing to a lack of financial resources and to the fact that her requests for legal aid had been refused. In that connection, the Committee notes the State party's submission that the author does not provide any evidence to support her claims that she lacks financial resources to exhaust domestic remedies. The Committee further notes that the author does not provide any information as to the reasons why her requests for legal aid were rejected.

7.5 The Committee also notes the author's concern about the effectiveness of the remedies available considering that, in all the court proceedings in which she was involved, she and her witnesses were not given credibility. In that regard, the Committee observes that the author does not make any reference to previous jurisprudence or otherwise substantiate her allegations that the domestic remedies available would be ineffective in her case. The Committee recalls that, according to its jurisprudence, the author's doubts about

the effectiveness of domestic remedies do not absolve her from exhausting them.[8] The Committee therefore concludes that the author's communication is inadmissible under article 5 (2) (b), of the Optional Protocol.

7.6 The Committee further notes that the last judicial remedy was used by the author in April 2008, when she made an application to the New States of Wales Guardianship Tribunal to be joined to the proceedings initiated by the Department of Community Services to seek a guardianship order in respect of her daughter. A lapse of almost seven years has therefore occurred between the most recent domestic remedy pursued by the author and the submission of her complaint to the Committee on 12 March 2015. While noting that, on 23 September 2013, the author's counsel sent a letter to the National Children's Commissioner of the Human Rights Commission requesting assistance, the Committee notes that the author does not demonstrate that it was submitted as a formal complaint and that it complied with the requirements to be admitted by the Human Rights Commission.

7.7 The Committee recalls that, according to rule 96 (c) of its rules of procedure:

An abuse of the right of submission is not, in principle, a basis of a decision of inadmissibility *ratione temporis* on grounds of delay in submission. However, a communication may constitute an abuse of the right of submission, when it is submitted after five years from the exhaustion of domestic remedies by the author of the communication, or, where applicable, after three years from the conclusion of another procedure of international investigation or settlement, unless there are reasons justifying the delay taking into account all the circumstances of the communication.

In that connection, the Committee observes that the author has not provided any explanation for such a delay in the submission of her complaint to the Committee. The Committee regards the delay to be unreasonable and excessive, thus amounting to an abuse of the right of submission. Accordingly, it declares the communication inadmissible pursuant to article 3 of the Optional Protocol.

7.8 Having reached the above conclusion, the Committee decides not to examine separately the remaining grounds for inadmissibility raised by the State party.

8. The Committee therefore decides:

(a) That the communication is inadmissible under articles 3 and 5 (2) (b) of the Optional Protocol;

(b) That the decision be transmitted to the State party and to the author.

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[8] See, for example, communication No. 262/1987, *R.T. v. France*, Views adopted on 30 March 1989, para. 7.4.